

FRANCISCO I. PULIDO, COMPLAINANT, VS. JUDGE MAGNO B. PABLO, RESPONDENT.

Adm. Matter No. 1888-CFI. September 30, 1982

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

In Adm. Mat. No. 1888-CFI, entitled "Francisco Pulido vs. Judge Magno Pablo", respondent Judge filed on November 16, 1981 his motion for reconsideration of the decision dated October 30, 1981.

In a sworn letter-complaint dated May 24, 1974, Benjamin Bantolino charged respondent District Judge Magno B. Pablo of the Court of First Instance, Branch XIII, Alaminos, Pangasinan, with "incompetence or ignorance of the law or deliberate violation of the law", because respondent Judge sentenced him for homicide through reckless imprudence to an indeterminate term of imprisonment ranging from "... one (1) year and one (1) day of prison correccional in its minimum period to three (3) years, six (6) months and twenty-one (21) days of prison correccional in its medium period; ordered to reimburse the heirs of Ludovico Cabarlo, the victim, the medical and funeral expenses in the amount of P1,000.00, and to indemnify them in the amount of P12,000.00 with subsidiary imprisonment as provided in Article 39, R.P.C., and with cost" (underscoring ours).

In his comment dated June 19, 1974, respondent Judge said that he already corrected the decision attached to the record before its promulgation on May 17, 1974 by changing the word "with" into "without" before the words "subsidiary imprisonment"; and that the copy of the decision delivered to Atty. Francisco Pulido, counsel of Benjamin Bantolino, was not corrected because his stenographer, Aurea V. Decena, delivered the same to Atty. Francisco Pulido without being aware of the correction and Atty. Pulido refused to return his copy to get even with respondent Judge.

In his recommendation dated July 1, 1977 to the then Chief Justice Fred Ruiz Castro, then Associate Court of Appeals Justice Ricardo C. Puno, as then Acting Judicial Consultant, said:

"x x x respondent Judge states that before the promulgation of the decision in question on May 17, 1974, the word 'with', written in the original decision before the words subsidiary imprisonment, was duly corrected, and in its stead the word 'without' was written as evidenced by the minutes of the session of the court on May 17, 1974 (Annex '1., p. 18, Rollo); that when it was duly promulgated by then Vacation Judge Gregorio Legaspi, 'the Decision was x x x "without subsidiary imprisonment"; that the copy of the decision furnished to Atty. Pulido, counsel of the accused, by Cesar Ginez and Aurea Decena, messenger and stenographer of the court, respectively, was not corrected as the two court employees were not aware of the correction then; that when the two realized that the copy given to the lawyer was an uncorrected one, they, together with Court Interpreter Leniente Ranoy, immediately asked Atty. Pulido to give back the copy so that it would be corrected to conform to the corrected original, 'but Atty. Pulido refused and said that he will have it photostat because he will file charge against Judge Magno B. Pablo' (Vide: Annex "2", p. 19, Rollo).

"Respondent contends that the copy given to Atty. Pulido was not 'the final and true copy' of the corrected original decision, as 'it was not certified by the Deputy or Clerk of Court'; that more than two weeks before the

herein respondent received the instant complaint, the records of Criminal Case No. 266-A 'had been forwarded to the Court of Appeals in connection with the appeal taken from the decision and it may be read therein that the decision was x x x "without subsidiary imprisonment".

"A judge has the power and authority to correct, amend, modify, or set aside his decision or judgment which has not yet become final or from which no appeal has as yet been perfected (Sec. 7, Rule 120, Rules of Court). Hence, respondent had the power and prerogative to cause the necessary change in the dispositive portion of his decision to correct a 'typographical error'.

" Furthermore, there is no dispute that the questioned decision of respondent judge is now on appeal. Consequently, any administrative complaint arising therefrom is premature.

"WHEREFORE, it is respectfully recommended that this case against District Judge Magno B. Pablo be dismissed (pp. 29-30, rec. of Adm. Matter No. 733-CFI, underscoring supplied).

Pursuant to said recommendation, this Court issued the following resolution dated July 14, 1977:

"Administrative Matter No. 733-CFI (Benjamin Bantolino vs. District Judge Magno B. Pablo). - The pertinent facts giving rise to the instant administrative case may be summarized as follows:

"The accused-complainant herein, Benjamin Bantolino, was found guilty of the crime of reckless imprudence resulting in homicide by the Court of First Instance of Pangasinan, respondent judge, Magno B. Pablo, presiding. He was sentenced 'to suffer imprisonment, according to Article 365, par. No. 2, of the Revised Penal Code and the indeterminate sentence law, to one (1) year and one (1) day of prison correccional in its minimum period to three (3) years, six (6) months and twenty-one (21) days of prison correctional in its medium period; ordered to reimburse the heirs of Ludovico Cabarlo, the victim, the medical and funeral expenses in the amount of P1,000.00, and to indemnify them in the amount of P12,000.00 with subsidiary imprisonment as provided in Article 39, R.P.C., and with cost' (underscoring ours). Judge Magno realized that there was a typographical error in the above decision and motu proprio corrected the same before it became final by changing the word 'with' to 'without' before the phrase 'subsidiary imprisonment'. Counsel for accused-complainant, Atty. Francisco Pulido, who had earlier secured a copy of the decision with the typographical error, was required to surrender said copy of the decision for correction. Atty. Pulido refused to give aforesaid copy back, and allegedly said that he would 'have it photostat to get even' with the Judge. Thereafter, the present Letter-Complaint for incompetence or ignorance or deliberate violation of the law against respondent Judge was filed with this Court.

"Considering the foregoing, the COMMENT of Judge Magno B. Pablo and the findings of the Judicial Consultant, Ricardo C. Puno, recommending dismissal of this case, this Court Resolved to -- (1) DISMISS the administrative charge filed against Judge Magno B. Pablo, Court of First Instance, Pangasinan, for LACK OF MERIT; and (2) require Judge Magno B. Pablo to formalize his charge within TEN (10) days from receipt hereof against Atty. Francisco Pulido for alleged [1] refusal to return for correction the copy of the decision with typographical error; [2] causing the filing of this complaint, and subjecting respondent judge to the trouble and harassment of an unfounded accusation, conduct unbecoming of a member of the legal profession" (pp. 33-34, rec. of Adm. Mat. No. 733-CFI).

On April 6, 1978, Atty. Francisco I. Pulido, filed a verified complaint against Judge Magno B. Pablo for "doing and consenting to the doing of falsehood, falsification of public document, dishonesty, deceit, misrepresentation of facts, abuse of authority, oppression and/or serious misconduct of inefficiency unbecoming of a member of the bench and bar."

The complaint docketed as Adm. Matter No. 1888-CFI is an offshoot of Criminal Case No. 266-A filed in the sala of respondent Judge against Benjamin Bantolino for homicide thru reckless imprudence.[*] After trial, respondent

Judge found the accused guilty as charged, and rendered judgment the dispositive portion of which reads as follows:

"WHEREFORE, finding that the prosecution had sufficiently established the guilt of the accused of the crime of reckless imprudence resulting in homicide charged in the information beyond reasonable doubt, the accused is hereby sentenced to suffer imprisonment, according to Art. 365, par. 2 of the Revised Penal Code, and the indeterminate sentence law, of one (1) year and one (1) day of prision correccional in its minimum period to three (3) years, six (6) months and twenty-one (21) days of prision correccional in its medium period. The accused is also ordered to reimburse the heirs of Ludovico Cabarlo the medical and funeral expenses in the amount of P1,000.00 and to indemnify the heirs of the victim Ludovico Cabarlo the amount of P12,000.00 with subsidiary imprisonment as provided in Art. 39, R.P.C., and with cost."

In view of the absence of the respondent Judge who was on vacation leave for the period from May 16 to 31, 1974, it was Judge Gregorio A. Legaspi, the vacation Judge, who promulgated the decision on May 17, 1974 (p. 17, rec.).

On May 20, 1974 , accused filed a notice of appeal (p. 265, rec. of Crim. Case 266-A).

On May 23, 1974 , accused filed an appeal bond (pp. 258-263, rec. of Crim. Case 266-A).

On May 29, 1974 , the records of Crim. Case No. 266-A were forwarded to the Court of Appeals by the then Clerk of Court, now Municipal Judge Teofilo C. Chiong (p. 1, CA-G.R. No. L-16898-CR).

The appeal of the accused was premised on the following grounds:

"THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE EVIDENCE FOR THE PROSECUTION TO THE EFFECT THAT THE DRUNKENNESS OF THE ACCUSED BENJAMIN BANTOLINO LED TO THE ACCIDENT IN QUESTION WHICH RESULTED IN THE DEATH OF LUDOVICO CABARLO.

"THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAD SUFFICIENTLY ESTABLISHED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT OF THE CRIME OF RECKLESS IMPRUDENCE RESULTING IN THE HOMICIDE CHARGED IN THE INFORMATION" (p. 43, CA-G.R. No. L-16898-CR).

On May 13, 1976 , the Court of Appeals rendered a decision affirming the decision of the lower court (pp. 78-84, CA-G.R. No. L-16898-CR).

A motion for reconsideration dated June 17, 1976 was filed on the ground that "the court erred in concluding that the plain recklessness of appellant was clearly the proximate cause of the victim's misfortune and subsequent death" (pp. 89-91, CA-G.R. No. L-16898-CR).

On June 25, 1976 the Court of Appeals issued a resolution denying the Motion for reconsideration (p. 98, CA-G.R. No. L-16898-CR).

On September 27, 1976 , defendant-appellant filed a petition for review on certiorari before this Court presenting the following issues for resolution:

1. Whether or not the facts established by the prosecution are sufficient to warrant the conclusion that the plain recklessness of the appellant was the proximate cause of the victim's misfortune and subsequent death.
2. Whether or not accused should be convicted on the basis of the surmises or conjectures (p. 108, CA-G.R. No. L-16898-CR).

In a resolution of the First Division of this Court dated October 4, 1976 , the petition for review on certiorari filed

by defendant-appellant was denied.

"L-44185 (Benjamin Bantolino vs. Court of Appeals, et al.). - The motion of the Citizens Legal Assistance Office for petitioner to admit petition for review, is GRANTED. Considering the allegations, issues and arguments adduced in the petition for review on certiorari of the decision of the Court of Appeals, the Court resolved to DENY the petition, the question raised being factual and for insufficient showing that findings of fact by respondent court are unsupported by substantial evidence and for lack of merit" (p. 78, rec. of L-44185).

On October 4, 1976, a copy of the decision was transmitted to the Court of Appeals with instructions to return the records of the case to the lower court for execution of judgment (p. 81, rec. of L-44185).

It appears from the records that the defense of respondent Judge consists mainly of a denial of the following specified acts charged in the complaint:

"1. On or about August 25, 1977, the respondent, taking advantage of his official position as CFI Judge in Alaminos, Pangasinan, and exercising undue influence over his personnel and gravely abusing his authority, caused the preparation, the signing and insertion into the record of Criminal Case No. 266-A a false document entitled 'Minutes' (Annex A, p. 15, rec.), knowing that such minutes never existed because the true minutes of the May 17, 1974 hearing is found on page 253 of the records of said case (Annex B, p. 16, rec.).

"2. The said false minutes contain a false statement of fact to the effect that it was Jaime V. Ariston who acted as stenographer when in truth and in fact it was Carmelita de Castro who was the stenographer during the said hearing, as shown by the affidavit (Annex D, p. 18, rec.) of Elpidio C. Balan, who acted as Interpreter for the same hearing.

"3. Upon receipt of the appealed decision from the Court of Appeals in CA-G.R. No. 16898-CR (Criminal Case 266-A), the respondent issued a commitment order (Annex E, p. 19, rec.) of the body of the accused Benjamin Bantolino addressed to the Provincial Warden of Pangasinan in which it was made to appear that his imprisonment will commence to run from the '8th day of February, 1977' when in truth and in fact it should commence on January 10, 1977, as shown by another commitment order (Annex F, p. 20, rec.) also signed by the respondent, which is the one attached to the records of the case.

"4. The respondent deliberately altered the decision as affirmed and quoted in the Court of Appeals' decision by changing the word 'with' to 'without' in its dispositive portion, such that the phrase which reads 'with subsidiary imprisonment' in the affirmed decision now reads 'without subsidiary imprisonment' quoted in the order of commitment (Annexes E and F, pp. 19-20, rec.). A certified xerox copy of the decision of the Court of Appeals is found on pages 22-30 of the records of this administrative case.

"5. The respondent affirmed under oath that the decision of the Court of Appeals in said criminal case contains a typographical error in misstating the word 'with' for 'without' when in truth and in fact the decision affirmed by the Court of Appeals says 'with subsidiary imprisonment' and the 'out' is an insertion between the words 'with' and 'subsidiary'.

"6. In the reply of Judge Pablo as complainant in Adm. Case No. 1837 (Pablo vs. Pulido), he denied under oath his signature on the commitment paper marked as Annex E hereof, stating that he signed only the other commitment paper [Annex F, with the date of commencement written as 10th of January, 1977, p. 19, rec.] The Provincial Warden of Pangasinan, however attests (Annex F, p. 21, rec.) that the original of Annex E was duly signed by the respondent and that there is no other commitment paper pertaining to Benjamin Bantolino except that one [same annex] which is on file in his office" (pp. 74-76, rec.).

Unfortunately, however, respondent's denial was brushed aside by this Court in the decision dated October 30, 1981.

Significantly, it did not escape the attention of this Court the additional defense interposed by respondent Judge which in effect raised the defense of res adjudicata when he averred:

"The attention of this Honorable Court is earnestly called to the fact that:

"1. In Adm. Matter No. 733-CFI (Benjamin Bantolino vs. District Judge Magno B. Pablo), this same particular charge had already been dismissed.

"xx xx xx.

"This decision of this Honorable Court has long been final. How could this same Honorable Supreme Court now say another thing on the same matter?" (pp. 2-3, Motion for Reconsideration, underscoring supplied).

The defense of res adjudicata is not well-taken. The requisites of res adjudicata are: (1) the former judgment must be final; (a) it must have been rendered by a court having jurisdiction over the subject matter and over the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, identity of parties, subject matter and cause of action (Aroc vs. People's Homesite and Housing Corporation, 81 SCRA 350; Obdulia vs. Ong, 82 SCRA 337).

A cursory review of the records would immediately manifest that there is no identity of parties between the two-administrative cases. In the first case, Adm. Matter No. 733-CFI, the complainant therein is Benjamin Bantolino, the accused in Criminal Case No. 266-A, thus said administrative case is captioned Benjamin Bantolino vs. District Judge Magno B. Pablo. On the other hand, the complainant in the present case (Adm. Matter No. 1888-CFI) is Atty. Francisco Pulido and hence the case is captioned Francisco Pulido vs. Hon. Magno B. Pablo.

The complainants in the above-said cases do not represent the same interest. While it is true that complainant Atty. Francisco Pulido acted as the counsel of Benjamin Bantolino in Criminal Case No. 266-A, the lawyer-client relationship is not germane to the administrative cases they separately filed against respondent Judge. There is not even substantial identity of interest. The personal interest of Benjamin Bantolino in filing Adm. Matter No. 733-CFI can easily be distinguished from that of Atty. Francisco Pulido in the instant case (Adm. Mat. No. 1888-CFI). Atty. Francisco Pulido filed the present case not only as a private citizen but as a vigilant member of the Bar and as an officer of the court.

Benjamin Bantolino instituted the first administrative case against respondent for ignorance of the law or violation of the law because respondent imposed subsidiary imprisonment on him, which is not authorized by the law.

Bantolino filed the first administrative case against respondent primarily in his interest as the accused in the criminal case; while Atty. Francisco Pulido filed the present administrative charge as an officer of the court, as a member of the Bar and as a private citizen, not for the vindication of his personal interest but for the promotion of public interest -- to discipline an erring member of the Judiciary to improve the administration of justice and thereby enhance public confidence or faith in the Judiciary.

Moreover, it may be stressed that there is no identity of cause of action between Adm. Matter No. 733-CFI and the present case, Adm. Matter No. 1888-CFI. In Adm. Matter No. 733-CFI, respondent Judge is charged with incompetence, ignorance of the law or deliberate violation of the law (p. 29, rec. of Adm. Matter No. 733-CFI) whereas in Adm. Matter No. 1888-CFI, respondent is charged with the following: "doing and consenting to the doing of falsehood, falsification of public document, dishonesty, deceit, misrepresentation of facts, abuse of authority, oppression and/or serious misconduct or inefficiency unbecoming (of) a member of the bench and bar" (p. 2, Complaint, p. 2, rec.) -- consisting of falsification of the Court of Appeals decision and minutes of court hearings as well as insertion in the record of a false commitment order.

Even if WE apply by analogy, one of the essential requisites of the well-known doctrine of double jeopardy in criminal law -- the rule of identity of offenses, WE see no reason to disturb the conclusion reached by this Court. The rule provides that "there is identity between two offenses not only when the second offense is exactly the same as the first, but also when the second offense is an attempt to commit the first or a frustration thereof, or when it necessarily includes or is necessarily included in the offense charged in the first information" (Francisco, V. J., *The Revised Rules of Court in the Philippines, Criminal Procedure*, 2nd ed. [1969] p. 677, citing the cases of *U.S. vs. Lim Suco*, 11 Phil. 484; *U.S. vs. Ledesma*, 28 Phil. 431; *People vs. Martinez*, 55 Phil. 6, underscoring supplied).

And "(A)n offense may be said to necessarily include another when some of the essential elements or ingredients of the former as alleged in the complaint or information, constitute the latter. And vice-versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form part of those constituting the latter" (Francisco, V. J., *The Revised Rules of Court in the Philippines, Criminal Procedure*, 2nd ed. [1969] p. 692).

The above-mentioned rule is not applicable. Undoubtedly, the following charges: doing and consenting to the doing of falsehood, falsification of public document, dishonesty, deceit, misrepresentation of facts, abuse of authority, oppression and/or serious misconduct or inefficiency unbecoming a member of the bench and Bar, and the specifications thereunder covered in the present case (Adm. Matter No. 1888-CFI) do not necessarily include the charges of incompetence, ignorance of the law or deliberate violation of the law and the specific acts covered in the earlier case (Adm. Matter No. 733-CFI), inasmuch as the essential elements or ingredients of the latter charges do not constitute the former. Conversely, the charges in the present case (Adm. Matter No. 1888-CFI) may not be said to be necessarily included in the charges covered in Adm. Matter No. 733-CFI considering that the essential ingredients of the former charges do not constitute or form part of those constituting the latter.

Furthermore, the defense of *res adjudicata* was not seasonably invoked.

It may be noted that respondent Judge initially raised the defense of *res adjudicata* only in the motion for reconsideration dated November 8, 1981. Atty. Pulido filed this complaint on April 6, 1978. Respondent failed to set up the defense of *res adjudicata* when he filed his comment dated June 19, 1974 in compliance with the first indorsement dated June 3, 1974 of the then Assistant to the Judicial Consultant, now Deputy Court Administrator Arturo B. Buena. Such failure to interpose the defense of *res adjudicata* at the earliest opportunity is fatal as it is deemed waived.

Thus, in the case of *Director of Lands vs. Court of Appeals, et al.* (G.R. No. L-47847, July 31, 1981), WE ruled:

"x x x Section 2, Rule 9, Revised Rules of Court of 1964, in no uncertain language, provides that:

"SEC. 2. Defense and objections not pleaded deemed waived. -- Defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; x x x.

"All defenses therefore not interposed in a motion to dismiss or in an answer are deemed waived (*Santiago, et al. vs. Ramirez, et al.*, L-15237, May 31, 1963, 8 SCRA 157, 162; *Torreda vs. Boncaros*, L-39832, January 30, 1976, 69 SCRA 247, 253);

"Thus, the defense of *res adjudicata* when not set up either in a motion to dismiss or in an answer, is deemed waived. It cannot be pleaded for the first time at the trial or on appeal (*Phil. Coal Miner's Union vs. CEPOC, et al.*, L-19007, April 30, 1964, 10 SCRA 784, 789).

Finally, as already mentioned hereinbefore, the defense of double jeopardy will not lie. In the same vein, granting

arguendo, that it was proper for respondent Judge to set up the defense of double jeopardy, it is nonetheless deemed waived for failure to interpose it at the earliest opportunity.

Section 2, Rule 117 of the Revised Rules of Court in the Philippines explicitly provides:

"Motion to quash -- grounds. The defendant may move to quash the complaint or information on any of the following grounds:

"xx xx xx.

"(h) That the defendant has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

"xx xx xx."

And "if the defendant does not move to quash the complaint or information before he pleads, he shall be deemed to have waived all objections which are grounds for a motion to quash. The only exception to this rule is when the information fails to charge an offense and the court is without jurisdiction of the offense charged (Sec. 10, par. 1, Rule 117, New Rules of Court)" [Martin, R.G., Rules of Court in the Philippines, Criminal Procedure, 3rd ed. (1972), p. 390].

The records amply show that respondent Judge brought before the attention of this Court, only when he filed on November 8, 1981, a motion for reconsideration, the fact that Adm. Matter No. 733-CFI was already dismissed per resolution of this Court dated July 14, 1977.

Respondent Judge therefore could not have claimed ignorance of the outcome/dismissal of Adm. Matter No. 733-CFI at the time Adm. Matter No. 1888-CFI was filed by Atty. Francisco Pulido on April 6, 1978. Well-established is the rule that the doctrine of jeopardy as a defense is an exception and, therefore, should be raised at an opportune time. x x x (U.S. vs. Claveria, 29 Phil. 556; People vs. Cabero, 61 Phil. 127). "The immunity must be 'specially' pleaded (14 Am. Jur. 956); that this must be done 'at the earliest opportunity' (Territory of Lobato, 134 P. 222, Yates v. State, 17 So. 2d. 594); and that, otherwise, it is deemed waived (14 Am. Jur. 958; Branch v. State, supra; State v. Bohn, 248 P. 119; People v. McDonald, supra; State v. Harper, 184 S.W. 2d 601; Driver v. Seay, 32 S.E. 2d 87). People vs. Casiano, G.R. No. L-15309, Feb. 16, 1961" [See Francisco, V.J., The Revised Rules of Court in the Philippines, Criminal Procedure, pp. 704-705].

The opportune time to raise the defense of double jeopardy as directed by Section 2 of Rule 117 is the period for the filing of a motion to quash.

It is therefore apparent that the parties and the causes of action or issues in the two cases are different. Therefore, neither the defense of double jeopardy nor res adjudicata will lie.

Even if such a defense were considered by the dismissal of the first administrative case, still the respondent remains guilty of falsifying (1) the minutes of the hearing of May 17, 1974 in Criminal Case No. 266-A; and (2) the commitment paper in the same criminal case by making it appear that the time of imprisonment of accused Benjamin Bantolino will commence to run on February 8, 1977, instead of January 10, 1977.

It should be also noted that respondent Judge, for ignorance of the law, was severely censured, reprimanded and ordered to pay a fine equivalent to one month salary in a decision in Adm. Mat. No. 604-CFI entitled "Teofilo Humilde, Complainant, versus Magno Pablo, Respondent" promulgated on February 20, 1981.

He has also two pending cases, namely, Adm. Mat. No. 513-CFI, entitled "Santiago Atcha, Complainant, versus Judge Magno Pablo, Respondent" for incompetence and ignorance, and Adm. Mat. No. 2656-CFI, entitled "Pedro

Braganza, Jr., Complainant, versus Judge Magno Pablo, Respondent" for gross and willful violation of the law, partiality, dishonesty, conduct unbecoming a judge, and incompetence.

However, respondent strongly appeals to the humanity and mercy of the Court, invoking his 35 years of government service, including ten (10) years in the Judiciary and manifesting that he was compulsorily retired upon reaching age 70 on January 1, 1982; and that he has not accepted any single centavo from any litigant during his 10-year stint in the Bench.

On the other hand, complainant Francisco Pulido, who affirmed that "time has healed wounded feelings", and accordingly prays for "peace and mercy -- justice with compassion", because he firmly believes that "no man is perfect and respondent is a man", even as said complainant concedes that "all the points therein (motion for reconsideration) raised have been passed upon judiciously" by this Court.

Atty. Vicente Millora, counsel for the respondent, filed on July 5, 1982 a manifestation dated June 23, 1982, stating that both respondent and his wife are very sickly and urgently need further medical attention, including an operation of respondent's wife which will depend on the modest retirement gratuity that may be accorded to him by this Court.

Considering the plea for mercy, compassion and humanity by both respondent and complainant, the dispositive portion of the decision dated October 30, 1981 is hereby modified to read as follows:

"WHEREFORE, RESPONDENT IS HEREBY DIRECTED TO PAY A FINE EQUIVALENT TO HIS SALARY FOR SIX (6) MONTHS, WHICH SHOULD BE DEDUCTED FROM HIS RETIREMENT BENEFITS.

"SO ORDERED."

Barredo, Concepcion, Jr., Guerrero, Abad Santos, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., Teehankee, Plana, Escolin, and Vasquez, JJ., in the result.

Aquino, De Castro, and Melencio-Herrera, JJ., no part.

[*]Three (3) administrative cases emanated from Criminal Case No. 266-A, namely: Adm. Matter No. 733-CFI (Benjamin Bantolino vs. District Judge Magno B. Pablo), Adm. Matter No. 1837 (Judge Magno B. Pablo vs. Atty. Francisco I. Pulido), and Adm. Matter No. 1888-CFI (Francisco I. Pulido vs. Judge Magno B. Pablo).

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